

Juvenile Life without Parole (JLWOP) – the effect of *Miller v. Alabama* on the delivery of indigent defense services in Mississippi. (October 2016)

Background

In 2005 the Supreme Court of the United States held that sentencing a person to death for a crime that occurred prior to their 18th birthday violated the federal constitution. *Roper v. Simmons*, 543 U.S. 551 (2005). In 2010 the Court held sentencing juvenile offenders to life without parole (JLWOP) for non-homicide offenses violated the federal constitution. *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011 (2010).

In June 2012 the Court held that automatic life without parole sentences for juvenile offenders convicted of homicide offenses violated the federal constitution. *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

In June 2013 the Mississippi Supreme Court recognized that under Mississippi's parole law enacted in 1994 and 1995, all life sentences are without parole. *Parker v. State*, 119 So.3d 987 (Miss. 2013). Thus the *Parker* Court held that *Miller* requires individual determinations of parole eligibility in all capital murder and murder cases before a life sentence without parole can be imposed. *Parker* applies to all juvenile offenders serving a life sentence at the time *Miller* was decided as well as all juvenile offenders convicted since. *Jones v. State*, 122 So3d 698 (Miss. 2013).

In light of these decisions every juvenile homicide offender is now entitled to a sentencing or resentencing hearing and entitled to counsel for that hearing. *See Perryman v. State*, 120 So.3d 1048 (Miss. Ct. App. 2013). Because life without parole is the equivalent of a death sentence when imposed on a juvenile offender, *see Miller*, equivalent procedures must be in place to ensure the defendant's constitutional rights are protected. *Dycus v. State*, No. 2012-M-02041-SCT (Order vacating sentence and remanding for new sentencing hearing before a jury pursuant to *Miss. Code* § 99-19-101) (Sept. 17, 2014).

This will require mitigation investigation and presentation including the use of experts, particularly in the field of child development. *See Davis v. State*, 87 So.3d 465 (Miss. 2012) (death sentence vacated where counsel failed to investigate and present mitigation).

Because these juvenile homicide cases are not "death penalty eligible offenses" Capital Defense Counsel cannot provide direct representation. *Miss. Code* § 99-18-5. However, under the State Defender's authority to utilize employees of one division in another division, Capital Defense has assisted the Public Defender Training Division in providing training and technical assistance to public defenders and volunteer counsel handling JLWOP cases. This assistance has been enhanced by a partnership with the Mississippi Office of the Southern Poverty Law Center in which OSPD is housing the JLWOP Resource Counsel funded through SPLC with a grant from the Vital Projects Fund. This limited assistance benefits the local defenders and counties but falls far short of ensuring they can meet the new constitutional mandate. This development increases the need for comprehensive indigent defense reform in Mississippi.

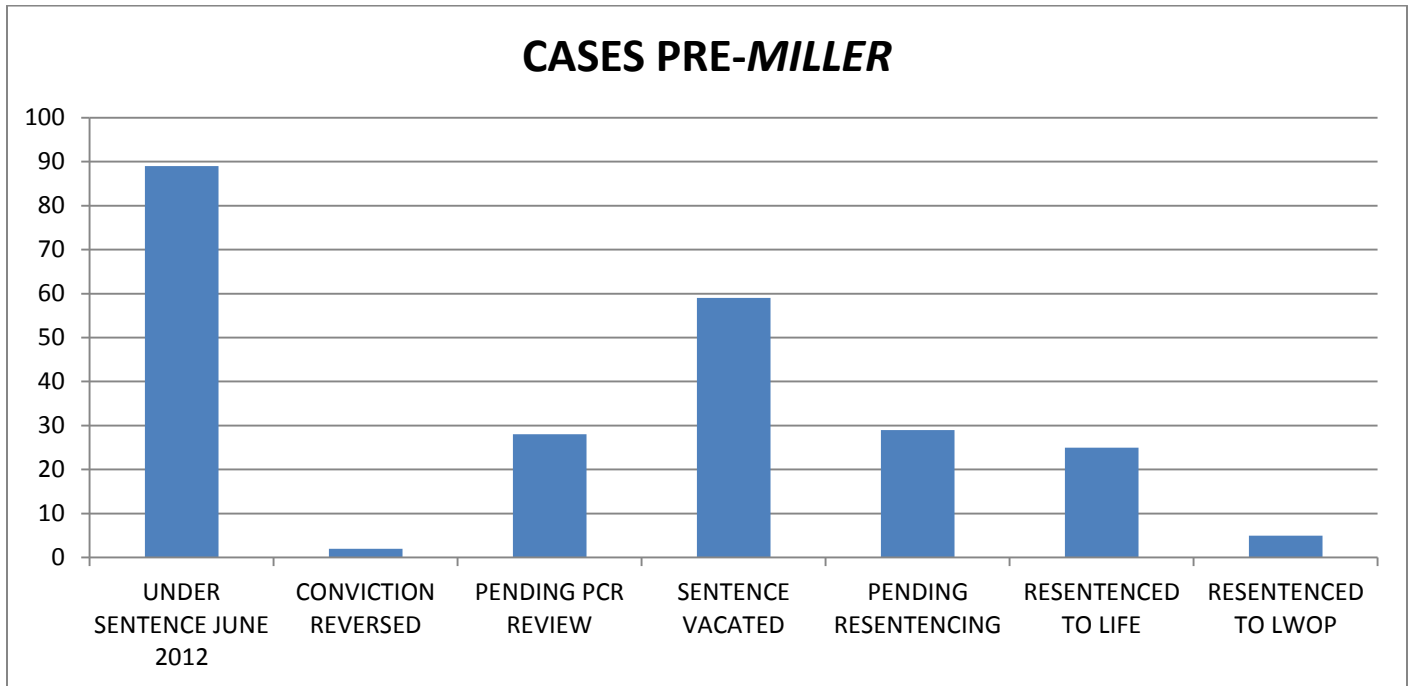
Scope of the Problem – old cases

Eighty-seven people¹ in Mississippi were sentenced to automatic life without parole sentences for crimes occurring when they were juveniles (JLWOP sentences). Four were on direct appeal when *Miller* was decided and 83 have since filed 85 post-conviction motions raising Miller claims.

¹ Two people have two sentences imposed in separate cases so the total number of cases is 89.

Of the four cases on direct appeal when *Miller* was decided, two had their convictions reversed and two had the JLWOP sentence vacated. In one of the two reversals the defendant was acquitted on retrial and the other plead to a reduced charge of manslaughter. One person whose sentence was vacated, Lester Parker, has been resentenced to life with parole. The second is pending resentencing.

The JLWOP sentence has been vacated in 57 of the 85 post-conviction cases. Twenty-four people have been resentenced to life with parole. Five resentenced to LWOP. Twenty-eight are before the trial court pending resentencing. The remaining 28 post-conviction cases are pending before a circuit court on Motion to Vacate.



Scope of the Problem – new cases

There were 16 potential JLWOP cases pending pre-trial when *Miller* was decided. Two were sentenced to automatic JLWOP for murder before *Parker* was decided and are counted in the 85 post-conviction cases noted above. One since *Parker* has been sentenced to JLWOP for murder. The others have been convicted of lesser charges or had charges dismissed.

Sixty-three new JLWOP eligible cases have been filed since July 1, 2012. Thirty-eight of these cases remain open. Of the 25 closed cases one person was sentenced to JLWOP bringing the total LWOP sentences post-*Parker* to seven. It is anticipated that there will be 10 new JLWOP eligible cases indicted each year needing appointed counsel.

The Bottom Line

Even the most conservative estimate of the cost to counties to provide constitutionally adequate counsel, investigators and experts in the pending cases would be in the millions with an additional \$750,000/year to handle future cases. This cost does not include the cost of empaneling juries.²

² See *Vicksburg Post* Editorial, April 1, 2015, regarding retrial of Vega case.